

## Department of the Navy, DoD

## § 776.86

written notice and an opportunity to be heard in writing, in those cases in which a covered attorney has been:

(1) Decertified or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Judge Advocate General of another Military Department;

(2) Disbarred or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Court of Appeals for the Armed Forces or by any Federal, State, or local bar; or

(3) Convicted of a felony (or any offense punishable by one year or more of imprisonment) in a civilian or military court which, in the opinion of the Rules Counsel, renders the attorney unqualified or incapable of properly or ethically representing the DON or a client when the Rules Counsel has determined that the attorney was afforded procedural protection equal to that provided by an ethics investigation under this instruction.

### § 776.86 Action by JAG.

(a) JAG is not bound by the recommendation rendered by the Rules Counsel, IO, PIO, or any other interested party, but will base any action on the record as a whole. Nothing in this instruction limits JAG authority to suspend from the practice of law in DON matters any covered attorney alleged or found to have committed professional misconduct or violated this part, either in DON or civilian proceedings.

(b) JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of subpart B of this part or its application to the facts of a particular case.

(c) Upon receipt of the ethics investigation, and any requested advisory opinion, JAG will take such action as JAG considers appropriate in JAG's sole discretion. JAG may, for example:

(1) Direct further inquiry into specified areas.

(2) Where determining the allegations to be unfounded, or that no further action is warranted, direct the Rules Counsel to make appropriate file entries and to notify the complainant,

covered attorney concerned, and all interested parties of such determination.

(3) Where determining the allegations to be supported by clear and convincing evidence, take appropriate corrective action including, but not limited to:

(i) Limiting the covered attorney to practice under direct supervision of a supervisory attorney;

(ii) Limiting the covered attorney to practice in certain areas or forbidding him or her from practice in certain areas;

(iii) Suspending or revoking, for a specified or indefinite period, the covered attorney's authority to provide legal assistance;

(iv) Where finding that the misconduct so adversely affects the covered attorney's continuing ability to practice law in the naval service or that the misconduct so prejudices the reputation of the DON legal community, the administration of military justice, the practice of law under the cognizance of JAG, or the armed services as a whole, that certification under Article 27(b), UCMJ (10 U.S.C. 827(b)), or R.C.M. 502(b)(3), MCM, 1998, should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently;

(v) In the case of a judge, where finding that the misconduct so prejudices the reputation of military trial and appellate judges that certification under Article 26(b), UCMJ (10 U.S.C. 826(b)), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently; and

(vi) Directing the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; notifying the complainant, covered attorney concerned, and any officials previously provided copies of the complaint; and notifying appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of a covered attorney as counsel before

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courts-martial or the U.S. Navy-Marine Corps Court of Appeals, administrative boards, as a legal assistance attorney, or in any other legal proceeding or matter conducted under JAG cognizance and supervision.

**§ 776.87 Finality.**

Any action taken by JAG is final, subject to any remedies afforded by Navy Regulations or any other regulation to the covered attorney concerned.

**§ 776.88 Report to licensing authorities.**

Upon determination by JAG that a violation of the Rules or the Code of

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Judicial Conduct has occurred, JAG may cause the Rules Counsel to report that fact to the Federal, State, or local bar or other licensing authority of the covered attorney concerned. If so reported, notice to the covered attorney shall be provided by the Rules Counsel. The JAG's decision in no way diminishes a covered attorney's responsibility to report adverse professional disciplinary action as required by the attorney's Federal, State, and local bar or other licensing authority.

**Subpart D [Reserved]**

**PARTS 777-799 [RESERVED]**